UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CASINO PAUMA

and 21-CA-161832

UNITE HERE INTERNATIONAL UNION

Amy Silverman, Esq.,
for the General Counsel.
Daniel Murphy, Esq.,
for the Respondent.
Kristin L. Martin, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge. On July 18, 2016, I issued my initial decision in this case based on a stipulated record, pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations. I found that the Respondent violated Section 8(a)(1) of the Act by maintaining four unlawfully broad rules in its employee handbook, including Rule 2.22, a no-solicitation no-distribution rule, and a portion of Rule 5.2 prohibiting solicitations absent prior written approval of management. Respondent took exceptions to the decision, and, on February 12, 2019, the Board issued an order remanding the case to me for further consideration under *Boeing Company*, 365 NLRB No. 154 (2017), which changed the law on the legality of some handbook rules. The remand order stated that the purpose of the remand was to reopen the record, if necessary, and to prepare a "supplemental decision addressing the complaint allegations affected by Boeing and setting forth credibility resolutions, finding of fact, conclusions of law, and a recommended Order."[1]

[1] A good deal of the time since the remand order was spent on attempting to settle the matter, alas without success.

On January 30, 2020, the Charging Party Union filed a motion to withdraw the charge that it filed on October 13, 2015 to initiate this case.[2] As authority for its motion, the Union cited Section 102.9 of the Board's Rules and Regulations.[3]

The motion states that the Union "is no longer engaged in an active organizing campaign" and "lacks interest in investing resources in the outcome of this matter." The Union also represents that it "has been informed that Region 21 will not oppose this motion." This would effectively amount to a dismissal of the entire charge that resulted in my earlier findings.

On January 31, 2020, I issued an order for the parties to show cause why I should not approve only that part of the proposed withdrawal that does not deal with the violations of Rule 2.22 and a portion of Rule 5.2 that were previously found unlawful, and reaffirm my decision as to violations in those 2 rules. In part the order reads as follows:

> The other rules violations were directly affected by *Boeing*'s new requirement that the Section 7 rights allegedly restricted by applicable rules must be balanced against legitimate employer business interests underlying those rules. That would require, in the posture of this case, a new analysis and arguably a hearing on the rules affected by the *Boeing* decision. Although *Boeing* changed the law sufficiently on this part of the case to arguably warrant withdrawing the relevant part of the charge and dismissing the related part of the complaint, based on the vicissitudes of further litigation on those specific rules, the part of the charge and the complaint that resulted in the solicitation and distribution rules violations found in my original decision were not affected by the *Boeing* decision. In that respect, the Board has clearly stated that *Boeing* "did not disturb longstanding precedent governing employer restrictions on solicitation and distribution, which already strikes a balance between employee rights and employer interests." *Cordua Restaurants, Inc.,* 368 NLRB No. 43, slip op. 5 (2019).

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[2] The charge alleged that the following 4 rules of Respondent were unlawful:

1. A rule that employees should only be on Casino Pauma Property when conducting Casino Pauma business.
2. A rule that "Any and all solicitations or distributions must cease immediately if the intended recipient expresses any discomfort or unreceptiveness whatsoever."
3. A "Social Media" policy requiring employees to include a disclaimer whenever they publish content on line that "has to do with work," prohibiting employees from citing or referencing guests, vendors, clients or employees without their approval, and prohibiting employees from posting photos taken at Casino Pauma.
4. A rule prohibiting solicitations of contributions to any organization or in support of any causes without the General Manager's approval, is unlawful.

[3] That section reads as follows in relevant part:

> The charge may be withdrawn . . . until the case has been transferred to the Board pursuant to Section 102.45, upon motion, with the consent of the Administrative Law Judge designated to conduct the hearing.

The parties thereafter submitted their responses to the show cause order. The Union now states it has no opposition either to withdrawal of the entire charge or to the partial withdrawal and partial affirmance set forth in my order. The General Counsel asks that I approve withdrawal of the charge insofar as it involves all the rules except the solicitation and distribution rules found unlawful in my original decision and asks that the latter findings be reaffirmed. The Respondent agrees with the withdrawal request as to the entire charge, in effect asking for dismissal of the entire case, including that aspect of the case dealing with the solicitation and distribution rules violations found in my original decision.[4]

Since all parties agree with the withdrawal request insofar as it involves the rules violations other than those dealing with the solicitation and distribution rules, I grant that request and dismiss the complaint insofar as it involves Rules 2.19, 2.23 and that portion of Rule 5.2 that prohibits conduct other than "[s]oliciting . . . support for any causes, unless the General Manager has granted written approval in advance." As I have earlier indicated, those rules would require further litigation as to whether they are valid after balancing competing rights under the *Boeing* decision. Withdrawal and dismissal are thus appropriate resolutions of these matters.

As to Rule 2.22 , a clear and broad no solicitation and no distribution rule,[5] and that portion of Rule 5.2 that prohibits "[s]oliciting . . . support for any causes, unless the General Manager has granted written approval in advance," I reaffirm my earlier findings that those rules violated Section 8(a)(1) of the Act because they were not affected by the *Boeing* decision and no further litigation is required on those matters. As shown below, I reject Respondent's specific contentions in support of its contrary position that the entire complaint, including that portion dealing with Rule 2.22 and the unlawful portion of Rule 5.2, be dismissed.

My Prior Decision on Rule 2.22 and a Portion of Rule 5.2

Here was my previous analysis on those rules:

> Rule 2.22 . . . requires that all solicitations and distributions cease "immediately" if the "intended recipient expresses any discomfort or unreceptiveness whatsoever." With limited exceptions not applicable here, employees have the protected right under Section 7 of the Act to solicit and distribute literature to fellow employees on behalf of unions or other common interests dealing with

[4] The Union's position is somewhat different than that in its original motion to withdraw. And the General Counsel's position is contrary to that which the Union represented in its motion, at least on the solicitation and distribution rules violations found in my original decision. Because the responses to the show cause order were filed simultaneously, in its response, Respondent assumed, incorrectly, that the General Counsel agreed to the withdrawal of the entire charge.

[5] Rule 2.22 is titled Solicitation and Distribution and reads as follows: "Any and all solicitation or distributions must cease immediately of the intended recipient expresses any discomfort or unreceptiveness."

wages, hours and terms and conditions of employment, so long as the solicitation is during non-work time and the distribution is not in work areas. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 802-805 (1945); and *Stoddard Quirk Mfg. Co*., 138 NLRB 615, 621 (1962). This includes the right to "engage in persistent union solicitation even when it annoys or disturbs the employees who are being solicited." *Ryder Truck Rental*, 341 NLRB 761 (2004), enfd. 401 F.3d 815 (7th Cir. 2005). Because Rule 2.22 broadly prohibits protected activity based on the subjective views of recipients, it infringes on protected rights and could reasonably be read that way by employees. The rule thus violates Section 8(a)(1) of the Act. See *2 Sisters Food Group*, 357 NLRB 1816, 1817 (2011); and *Teletech Holdings, Inc*., 333 NLRB 402, 403 (2001).

Rule 5.2 . . . prohibits employee solicitation "in support of any causes" unless "the General Manager has granted written approval in advance." Here again the language is broad enough to apply to protected solicitation of fellow employees on behalf of unions or other common interests—clearly Section 7 rights, as shown above. The rule's explicit pre-condition—obtaining written approval of management in advance—is an unlawful restriction on those rights. *Brunswick Corp.* 282 NLRB 794, 795 (1987). Accordingly, this rule also violates Section 8(a)(1) of the Act. See *Teletech Holdings*, cited above, 333 NLRB at 403; and *Schwan's Home Service*, 364 NLRB No. 20, slip op. 4 (2016).

Discussion and Analysis

The Board has clearly stated that it "routinely issues cease and desist orders to remedy the violations found," citing the requirement in Section 10(c) of the Act that the Board "shall" issue such orders when it finds violations and explaining that such orders prohibit the repetition of unlawful conduct. *Hawaiian Telecom, Inc*., 365 NLRB No. 36, slip op. 6-7 (2017). See also *Whirlpool Corp. v. NLRB*, 92 F. Appx. 224 (2004) denying petition for review and enforcing 337 NLRB No. 117, citing *International Union United Auto Workers v. NLRB*, 427 F.2d 1330, 1332-1334 (6th Cir. 1970). Accord: *International Woodworkers of America, AFL-CIO, Local 3-10 v. NLRB,* 380 F.2d 628, 630-631 (D.C. Cir. 1967).

After full litigation of a case before an administrative law judge resulting in a violation of the Act, the Board may utilize its own discretion in nevertheless dismissing the complaint but does so only in special circumstances. See *Dilling Mechanical Contractors*, 357 NLRB 544, 545 (2011).

In *Flyte Tyme Worldwide,* 362 NLRB 393 (2015), the Board rejected a proposed withdrawal of a charge, after issuance of an administrative law judge's decision finding an unfair labor practice, that the region did not oppose, even though it was part of a non-Board settlement that included a substantial cash award to affected employees. The Board stated that its power to prevent unfair labor practices is "exclusive," and "its function is to be performed in the public interest and not in the vindication of private rights." Thus, the Board continued, "the Board alone is vested with lawful discretion to determine whether a proceeding, when once instituted may be abandoned," omitting

citation. The Board concluded that it would not effectuate the policies of the Act to dismiss the charge where a settlement "does not address, much less provide a remedy for, the violation alleged in the charge." Ibid. The Board also rejected the application of the settlement principles in *Independent Stave Co., 287 NLRB 740* (1987) to this type of situation. 362 NLRB 393 at fn. 1.[6]

As the Board's agent in this case, I have the authority to exercise the Board's discretion. I do so by rejecting the proposed withdrawal of the charge insofar as it would amount to a dismissal of unfair labor practices already found with respect to the solicitation and distribution rules in Rule 2.22 and a portion of Rule 5.2 in Respondent's handbook.[7]

As indicated, I reaffirm my earlier findings with respect to Rule 2.22 and Rule 5.2. The violations are well established by the authorities that I cited in my earlier decision. Indeed, those violations are unaffected by the *Boeing* case which was the basis of the Board's remand. As the Board has clearly stated, *Boeing* "did not disturb longstanding precedent governing employer restrictions on solicitation and distribution, which already strikes a balance between employee rights and employer interests." *Cordua Restaurants, Inc*., 368 NLRB No. 43, slip op. 5 (2019). The guiding principles on these matters were affirmed and spelled out by the Supreme Court in a landmark Supreme Court decision some 75 years ago. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 802-805 (1945). Significantly, and in recognition of the overwhelming legal basis for the violations in Rule 2.22 and the relevant portion of Rule 5.2, in its brief to the Board on exceptions to my original decision in this case, the Respondent offered only a perfunctory defense of the relevant rules—a discussion covering all of 10 sentences with no citation of authorities.[8]

Respondent's Reasons for Dismissal Lack Merit

In its response, Respondent concedes that this situation does not amount to a settlement but asserts that what it has done or will do in the future presents an effective remedy and avoids costly further litigation. But, as I have indicated, the violations on the relevant matters are clear and no further litigation is required. Nor is the proposed remedy an effective remedy. It is not a Board remedy and it does not amount to compliance. It is also significant that the General Counsel opposes the Respondent's position that the entire case should be dismissed.

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[6] In *Flyte Tyme*, the violation involved was based on Board law subsequently overturned by the Supreme Court, but that does not affect the validity of the specific point made by the Board in rejecting the proposed withdrawal of the charge in that case. Nor has the Board's view on the matter been altered by subsequent decisions.

[7] Neither *Dilling* nor *Flyte Tyme* discussed Section 102.9 of the Board's Rules and it is unclear whether that rule applies after unfair labor practices have been found after a Board hearing.

[8] In view of the acknowledged lack of application of *Boeing* to this part of the case and the Respondent's lack of any kind of defense to the solicitation and distribution rules violations, it is perplexing why the Board did not simply adopt the findings as to those violations and remand only the findings that were affected by the *Boeing* decision.

Turning to specifics, Respondent asserts as a reason to dismiss the complaint allegation as to Rule 2.22 that the rule was rescinded in July of 2017, well after my original decision issued and indeed after the exceptions were filed with the Board. It is asserted that Respondent issued a new solicitation distribution rule under its Code of Conduct and the rule is attached as an appendix to its response. But the appendix does not show context or anything else that would be meaningful in determining whether the circumstances support an effective remedy for the violation. In opposing the Respondent's position, counsel for General Counsel represents that she was notified in advance of the Respondent's contention about the rescission, but asserts that the Respondent has not presented any evidence that "the rule found to have been unlawful was rescinded and replaced or that employees were informed of this." The General Counsel also states that the version of the replacement rule provided by Respondent is "devoid of context and its numbering is inconsistent with the [old] rule."

I cannot dismiss the relevant allegation simply based on the representations of Respondent's counsel. But even the representations made do not show anything close to full compliance with my recommended remedy. Certainly, those representations are not enough without the General Counsel's favorable assessment of the asserted remedy as compliance. Accordingly, and for the reasons stated by the General Counsel, I cannot accept Respondent's reason for dismissing the violation as to Rule 2.22.

Respondent's reason for dismissing the complaint allegation as to that portion of Rule 5.2 previously found unlawful is similar and similarly without merit. But here the new rule is not even in effect. It is represented that the offending language in Rule 5.2 will be rescinded and replaced with a new rule no later than March 23, 2020. The excerpt of the new rule in the appendix is exactly the same as the old rule that was found unlawful, but it adds language excepting lawful solicitations in "activity protected by the National Labor Relations Act."[9] That would be a significant modification, but, as mentioned by the General Counsel in opposition to dismissal of this allegation, there is no context provided, including explicit rescission of the old rule or notification to the employees about the impropriety of the old rule. Here again, I cannot accept the asserted remedy as compliance unless it is verified by the General Counsel. And here again I cannot accept Respondent's reason for dismissing the violation as to Rule 5.2.

In short, Respondent's asserted remedy or compliance long after the violations were found is not only not verified and incomplete, but it comes too late. The employees are entitled to a remedy for having been subjected to unlawful rules. Here, "better late than never" is much preferred over Respondent's position that. because of the passage of time, "never is better."[10]

[9] It appears that this addition is roughly the same language that I suggested to the parties during settlement discussions in a March 2019 email, which included other suggestions that would have resolved the entire case a year ago.

[10] In its response, the Respondent also takes a stab at justifying the old rule by asserting that it is part of an overall section of the rules called "conflicts of interest," most of which does not deal with solicitation or the approval of management. But Respondent does not dispute my original findings on the aspect of the rule found unlawful; nor does it dispute the application of the case authority on this point.

What about *Jimmy Wakely*?

Some of Respondent's contentions evoke an interesting case from another era arguably helpful to its cause, although the case is not cited or discussed by Respondent. Thus, an argument could be made that no remedy is needed here because the solicitation distribution rules violations are de minimis or insubstantial under the authority of the *Jimmy Wakely* case (*American Federation of Musicians, Local 76 (Jimmy Wakely Show)* 202 NLRB 620 (1973)). As shown below, however, the *Jimmy Wakely* case does not justify dismissal here.

Jimmy Wakely was a second tier singing cowboy and recording artist, whose singles included "I Love You so Much it Hurts" and "Everyone Knew it But Me." He also hosted a traveling musical revue, which came into the ambit of the NLRB nearly a half-century ago. Jimmy Wakely died in 1982 at the age of 68, but he lives on, eponymously, in the Board case reports, most recently in a cite from Chairman Ring's dissent in *Trinity Services Group, Inc.,* 368 NLRB No. 115, slip op. 6 (2017).

The *Jimmy Wakely* case permits dismissal of a complaint allegation because the violation is too isolated or de minimis to warrant a remedy—its basic holding and most significant point. The case itself is remarkable only in its insignificance. The complaint alleged that the respondent union violated Section 8(b)(1)(B) of the Act, which prohibits union coercion of an employer in the selection of a bargaining representative or grievance handler. The union had threatened to discipline one of its members, John Wakely, if he continued to work for the musical show of his father, Jimmy. John was a supervisor, so the threat arguably coerced his father, the employer, to change the person charged with adjusting grievances on his behalf. The trial examiner (now ALJ) dismissed the complaint in part because John was no longer a member of the union when the threat was made so the union did not have the power to subject him to union discipline. The Board noted that existing law would justify the violation even if John had resigned from the union but nevertheless upheld the dismissal, finding that the alleged misconduct was moot since the union had subsequently withdrawn the threat. The Board went on to say that, even if the matter were not moot, such insignificant cases did not warrant consideration, particularly because of concerns about the Board's "rising case load." Id. at 621. In summary, the Board stated (202 NLRB at 622):

> [I]n view of the increasing need for expedition in the processing of cases, we have concluded the we ought not expend the Board's limited resources on matters which have little or no meaning in effectuating the policies of this Act. Thus, in this insubstantial case, we would find that the conduct involved, although it may have been in technical contravention of the statute as interpreted by this Board, was nevertheless so insignificant and so largely rendered meaningless by

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Continued
Respondent's attempt to parse the language of the rule to excise the requirement that solicitations for any cause, including protected activity under Section 7 of the Act unless it is approved in advance by management, is unavailing.

> respondent's subsequent conduct that we will not utilize it as a basis for either a finding of violation or a remedial order. The complaint herein should be, and hereby is, dismissed.

The underpinnings of *Jimmy Wakely* are shaky, especially when viewed from today's perspective. First of all, as the Board itself noted in its decision (202 NLRB at 621), there is much authority that, once a violation is found, the Board may not withhold issuance of a remedial order. Indeed, Section 10(c) of the Act mandates that a remedial order "shall" issue upon the finding of an unfair labor practice. This view prevails today. See the *Hawaiian Telecom* and *Whirlpool Corp*. cases cited and discussed above. Although the Board in *Jimmy Wakely* also mentioned criticism from some appellate courts of insignificant cases coming their way, the criticism seemed to be directed more to the General Counsel's prosecutorial discretion in issuing complaints. 202 NLRB at 621. See also the observations of Member Penello, who was on the *Jimmy Wakely* panel, in *Catholic Medical Center of Brooklyn and Queens, Inc.,* 245 NLRB 808, 812 fn. 23 (1979).

Secondly, the concerns expressed in *Jimmy Wakely*—that the Board's resources could not match its rising case load—are no longer applicable. In FY 1973, when *Jimmy Wakely* was decided, the Board issued 1463 decisions in contested cases; in FY 2019, the Board issued 303 decisions in contested cases. This is a decrease of 80%. Compare 38th Annual Report of NLRB, p. 18, with press release of Oct. 7, 2019 at www.NLRB.gov. Indeed, it is very unlikely that, in today's world, the *Jimmy Wakely* case would have reached even the trial level, much less the appellate level of the Board. Today, the General Counsel is more inclined institutionally to use prosecutorial discretion to screen out such cases or settle them before complaint issues. But, even at the trial level, administrative law judges today are more active in securing settlements. In the early 1970s, one-third (33%) of ALJ dispositions were by settlement rather than by decision; in 2019, about 75% of ALJ dispositions were by settlement. The decades-long emphasis on settlements across all levels of the Board since its issuance in 1973 has made *Jimmy Wakely* only a ghostly presence today in the annals of the Board.

Finally, a fair analysis of the case law after *Jimmy Wakely* shows that the dismissals of complaints by the Board on the basis of insignificance are rare and based on unique compliance factors truly making any remedial order unnecessary—factors not present here. Since the issuance of *Jimmy Wakely* in 1973, the case has been much cited by the Board, usually in a dissent urging its application or by a majority rejecting its application, but rarely followed. Only a handful of cases, all but one in the 1970s, involved actual dismissals for de minimis violations. And those, like *Jimmy Wakely* itself, were ones where the "unlawful conduct had been substantially remedied or effectively contradicted by subsequent conduct." *Dish Network Service Corp.,* 339 NLRB 1126, 1128 fn. 11 (2003), citing and discussing relevant cases.[11]

[11] In that same category is *Titanium Metals Corp.,* 274 NLRB 706 (1985), a last gasp *Jimmy Wakely* dismissal not cited by the Board in *Dish*, where the Board, without comment, affirmed a judge's dismissal of a single Section 8(a)(1) allegation on that basis.

A case in point is *Bellinger Shipyards, Inc.,* 227 NLRB 620 (1976), where the Board acknowledged that the employer's no-solicitation rule was unlawful but noted that the employer had rescinded that rule before the complaint issued. The Board therefore dismissed the complaint, citing *Jimmy Wakely*, because, in its view, the alleged misconduct "was so minimal and has been so remedied by the [employer's] subsequent conduct that the entire situation is one of little significance and there is no need for a Board remedy." Ibid.

Bellinger involved the same type of violation as involved in this case. But, even assuming its continued validity, *Bellinger* is distinguishable. The restrictions here on protected solicitation and distribution, embodied in two separate rules that applied to all employees, were broader, particularly in requiring the prior approval of management, than the simple rule in *Bellinger.* More importantly, unlike in *Bellinger*, the unlawful rules here were not rescinded prior to the issuance of the complaint. One was allegedly rescinded in July of 2017, well after my original decision and after exceptions were filed with the Board. And the other has not yet been rescinded even after four-plus-years of litigation. Nor have the circumstances of the alleged rescissions and notifications to employees been investigated and confirmed, as the General Counsel has pointed out. If anything, contrary to Respondent's contention, the passage of time without a remedy more strongly supports the requirement of a real and an effective Board remedy now.

Accordingly, I find that *Jimmy Wakely* does not aid Respondent in this case. The violations here were not de minimis and the employees deserve a full Board remedy for the violations. Respondent's employees deserve to be told in an official government notice that the rules in effect when the case was first litigated were illegal and that the employer will not restrict their statutory rights in the future.

Summary

I grant the withdrawal request only insofar as it does not affect Rule 2.22 and the portion of Rule 5.2 that I previously found unlawful and I reaffirm my earlier findings, conclusions, remedy and order as to those rules. I have altered the following conclusions, remedy and order to reflect only the solicitation and distribution rules violations.

CONCLUSIONS OF LAW

1. By maintaining rules that (a) require solicitations and distributions to "cease immediately" if the "intended recipient expresses any discomfort or unreceptiveness whatsoever;" (b) prohibit solicitations unless management gives prior approval, Respondent has violated Section 8(a)(1) of the Act.

2. The above violations are unfair labor practices affecting commerce within the meaning of the Act.

3. In all other respects the withdrawal request of the Charging Party is approved.

REMEDY

Having found that Respondent has engaged in unfair labor practices found above, it shall be ordered to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act. Respondent must rescind or revise the handbook rules that have been found unlawful. It may comply by rescinding the unlawful language and republishing its employee handbook without it. The Respondent may supply the employees either with handbook inserts stating that the unlawful language has been rescinded, or with new and lawfully worded language on adhesive backing that will correct or cover the unlawful language until it republishes the handbook without the unlawful language. Any copies of the handbook that include the unlawful language must include the inserts before being distributed to employees. See *Guardsmark, LLC*, 344 NLRB 809, 812 fn. 8 (2005), enfd. in rel. part 475 F.3d 369 (D.C. Cir. 2007).[12]

On these findings of fact and conclusions of law, and on the entire record herein, I issue the following recommended[13]

ORDER

Respondent, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Maintaining language in its employee handbook rules that bans employee solicitations or distributions dealing with union or other protected activity if the intended recipient expresses discomfort or unreceptiveness or requires advanced approval from management for such solicitations.
(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the language in its employee handbook rules that prohibits employee solicitation or distributions dealing with union or other protected activity if the intended recipient expresses discomfort or unreceptiveness or requires advanced approval from management for such solicitation.
(b) Furnish all current employees with inserts for the current employee handbook rules that advise that the unlawful language in the rules has been rescinded or provide lawful language for those rules; or publish and distribute to

[12] Any issues as to whether some of these affirmative requirements have already been accomplished and whether they are adequate may be handled in the compliance phase of this case.

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order herein shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

employees a revised handbook that does not contain the unlawful language or provides the language of lawful policy or rules.

(c) Within 14 days after service by the Region, post at its facility in Pauma Valley, California, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet dite, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since October 13, 2015.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

It is also ordered that the complaint allegations of violations not found herein are dismissed.

Dated, Washington, D.C., March 3, 2020.

Robert A. Giannasi
Administrative Law Judge

[14] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain language in the employee handbook rules that bans employee solicitations or distributions dealing with union or other protected activity if the intended recipient expresses discomfort or unreceptiveness or requires advanced approval from management for such solicitations.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL rescind the language in the employee handbook rules that prohibits employee solicitation or distributions dealing with union or other protected activity if the intended recipient expresses discomfort or unreceptiveness or requires advanced approval from management for such solicitation.

WE WILL furnish all current employees with inserts for the current employee handbook rules that advise that the unlawful language in the rules has been rescinded or provide lawful language for those rules; or publish and distribute to employees a revised handbook that does not contain the unlawful language or provides the language of lawful policy or rules.

CASINO PAUMA

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it

investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor, Los Angeles, CA 90017-5449
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-161832 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (213) 894-5184.